Case No. 88-445

Supreme Court, U.S.
FILED
OCT 21 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PAUL and ANNA BROAD,
Petitioners, Pro Se,
v.

WILLIAM F. CONWAY; ROBERT H. ISEMAN;
DeGRAFF, FOY, CONWAY, HOLT-HARRIS & MEALEY,
Respondents,

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ORDER UPHOLDING THE ORDER FOR SUMMARY JUDGEMENT FROM U.S.DISTRICT COURT FOR NORTHERN DISTRICT OF NEW YORK

Paul and Anna Broad, Petitioners - Pro Se
18 Chase Avenue
North Adams, MA 01247
Tel: (413) 663-8611

Robert P. Roche, Attorney for Respondents
36 South Pearl Street
Albany, NY 12207
Tel: (518) 436-9370

TABLE OF CONTENTS

PAGE

1. NEW EVIDENCE - RESPONDENTS DECEIVE US AND THE COURTS..... 1
   a. Court Denied Permission to File motion for summary judgement... 1
   b. Witholding information..... 1
   c. Deceit and coercion..... 2
   d. We would have won in Court..... 2
   e. Mr. Iseman's collusion..... 3

2. THE RIGHT TO SUE..... 3

3. THE ISSUE OF COERCION..... 4
   a. Settlement was not voluntary..... 4
   b. Coercion on Court Records..... 5
   c. Prevention of Dismissal of our Case..... 6
   d. Abuse of discretion..... 6

4. JURISDICTION..... 7
   a. 28 U.S.C. para 1254 (1)..... 7
   b. Rule 17..... 7
   c. Conflict with own ruling by Court of Appeals..... 8
   d. Judiciary Act of 1789..... 8
   e. Violation of Constitutional Rights..... 8

CONCLUSION..... 9

***

APPENDIX: Mr. Sabo's letter to Judge Miner of September 14, 1984.

NEW EVIDENCE -

RESPONDENTS DECEIVE US AND THE COURTS

THE RESPONDENTS KNOWINGLY AND WILLINGLY DECEIVED US. THEY KNOWINGLY AND WILLINGLY DECEIVED THE LOWER COURTS. THEY ARE STILL KNOWINGLY AND WILLINGLY DECEIVING THE SUPREME COURT.

We have just now received evidence to prove it. Our Appendix clearly shows that the attorney for the defendents wanted to file a motion for Summary Judgement before and after the Gaeta ruling and that Judge Miner, the presiding Judge in our case, before being promoted to the Court of Appeals, just before our case was coming up for trial, DENIED PERMISSION TO MAKE SUCH A MOTION. Mr. Conway and Mr. Iseman knew about it but never told us that Judge Miner denied a permit for such a motion by the defense. Nor did they disclose that information to

the courts. To the contrary, they asserted before the Lower Courts and are still asserting in their Brief in Opposition page 14 that the district court would have dismissed our case against General Electric Broadcasting Company and Judy Sanders on a motion for Summary Judgement. Mr. Sabo's letter to Mr. Miner is also evidence that Mr. Iseman's threats of imminent dismissal of our case by the Court and after the Gaeta case that the Court will dismiss our case on grounds of that ruling were mere scare tactics to deceive us, intimidate us, and coerce us into a settlement. Judge Miner's refusal to permit a motion for summary judgement was also the reason why Mr. Iseman wanted to transfer our case to a state court. It also affirms that we have never considered any settlement but insisted on a trial. MR. SABO'S LETTER TO JUDGE MINER IS EVIDENCE THAT WE WOULD HAVE WON OUR CASE ON ITS MERITS.

We also have new evidence regarding the conspiracy to cover up the murder of our daughter and evidence of collusion by Mr. Iseman, that he lied in his affidavit to the Court and that he divulged information from our case he was representing to Mr. Becher and his attorney, now pending before the District Court (Petition, page 41).

THE RIGHT TO SUE

The District Court in its Order for Summary Judgement recognized two components: 1) Our right to sue, and 2) the issue of coercion. The District Court ruled that even if we would have voluntarily settled, which we did not, that that "does not preclude (us) from bringing the present legal malpractice action." (Appendix 7 to Petition, page 13)

THE ISSUE OF COERCION

As we pointed out in our petition and throughout the proceeding in Lower Courts, we did not settle voluntarily but we were coerced into the settlement by our attorney, Mr.Conway and by Mr. Iseman. Furthermore, they prejudiced the court against us, their clients, by their false and malicious accusations in order to obstruct justice, the due process of law and to prevent a trial. (Petition page 12-17). Judge Gagliardi, being prejudiced by our attorneys, called us twice into his chamber and pressed us to settle.

We insisted on a trial. Realizing that our attorneys prejudiced the court against us, we immediately asked the Judge for a postponement of the trial to give us time to replace them. Judge Gagliardi refused our request. To have our objections to the coerced settlement on court records, we asked the Judge to call in the stenographer. (Peti-

tion, page 21-25). The Transcript of the Proceeding in Judge's Chambers submitted to the District Court and to the Court of Appeals, says on pages 3 and 4, among others:

"THE COURT: Mr. Broad indicated that he wanted to put something on the record here.

MR. BROAD: Yes, I would Your Honor. Since you brought up again that question today, I am --We are accepting the offer with certain provisions....Since Mr. Conway is not representing us in court and other developments in our case and since you, Your Honor, cannot grant us a postponement of the trial we are forced to accept the defendent's offer.

We feel, however, Your Honor, that Mr. Conway absence in Court and the conduct of our attorneys is a betrayal of our confidence, Moreover, we feel that it is a part of the conspiracy to cover up the murder of our daughter."

Mr. Iseman was constantly scaring us with imminent dismissal of our case by the Court. From the proceedings before Judge Gagliardi, his pressuring us to settle and his remarks "You don't know what the Court may decide." (Petition, page 19-20) we understood that if we did not accept the coerced settlement, he would, here and now, throw out our case. In such instance, we would have remained in the eyes of the public the murderer of our own child. In order to prevent the dismissal of our case by Judge Gagliardi, we were forced to accept the offer and we were forced to answer affirmatively to his questions regarding the "Voluntary and Without Coercion settlement." We did not negotiate any monetary matters. We saw only to it that the T.V. Station retracts all of their grave allegations against us.

HOW CAN THIS BE CONSTRUED AS VOLUNTARY OR WITHOUT COERCION WHEN A LITIGANT AT THE

SAME COURT, AT THE SAME TIME, BEFORE THE SAME PRESIDING JUDGE, REQUESTS A POST-PONEMENT OF A TRIAL IN ORDER TO REPLACE HIS ATTORNEYS AND ACCUSES HIS ATTORNEY AT THE SAME TIME, BEFORE THE SAME JUDGE, OF BECOMING A PARTY TO A CONSPIRACY TO COVER UP A MURDER?

The Proceedings in Judge's Chambers and in the courtroom were clearly an abuse of discretion by Judge Gagliardi.

JURISDICTION

The Supreme court has jurisdiction pursuant to 28 U.S.C. paragraph 1254 (1). The Respondent's reference to Rule 17 within Brief in Opposition, page 10-20 reads also:

> "a) When a Federal Court of Appeals renders a decision in conflict with a decision of another federal court of appeals on the same matter... or has so far departed from accepted and

usual course of judicial proceedings or so far sanctioned such departure of Lower Court as to call for an exearcise of this Court's power of supervision."

In our case the Court of Appeals not only departed from the accepted and usual course of judicial proceedings, but is in conflict with their own rulings on coercion in the cases Kothe v. Smith 771 F.2d 667 (1985) and Skinner v. Stone, No. 83-7358 as pointed out in our petition, page 29-32.

The Judiciary Act of 1789, Section 13, reads:

"The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states...and shall have power to issue writs of prohibition to district courts."

Our Petition raises issues of violation of rights guaranteed by the Constitution of the United States including Freedom of

Speech, the Right of Trial and Due Process of Law.

CONCLUSION

Alexander Hamilton said: Laws are dead letter without expounding and defining their true meaning and operation. – The Supreme Court is the conscience of the United States. – "EQUAL JUSTICE FOR ALL" is carved over the entrance to the Supreme Court.

In view of the above and our Petition, the Respondents Brief in Opposition should be dismissed and a Writ of Certiorari should be granted and the case remanded for trial.

Dated: October 21, 1988

Respectfully Submitted,

P. Broad

Paul Broad for Petitioners
18 Chase Avenue
North Adams, MA 01247
Tel: (413) 663-8611

APPENDIX

DONOHUE, DONOHUE & SAGO, P.C.

Attorneys and Counsellors at Law

101 Columbia Street

Albany, N.Y. 12210

Robert J. Armstrong Phone: (518) 463-2292

Paul F. Donohue, Sr.

Paul F. Donohue, Jr.

Alvin O. Sabo

Kenneth G. Varley

George C. Cooley

September 14, 1984

Honorable Roger J. Miner

United States District Court

US Court House & P.O.Building

Albany, NY 12207

Re: Broad V. General Electric Broadcasting and Sanders

Civil Action No. 82-CV-1236

Our File #4442

Dear Judge Miner:

On September 13, 1984 I had a conversation with your clerk, Leo Gogion, so that I could verify what Mr. Armstrong told me after the argument of our motion to amend the scheduling order. The Court records indicate that we were indeed granted until September 30,1984 to depose Lev Levitin, but denied permission to make a summary judgement motion.

The New York State Court of Appeals in June of this year decided the case of Gaeta v. New York News Inc. which I feel will warrant summary judgement in this

present case. Obviously Mr. Iseman disagrees with my position; however, I would hate to go through a week's trial only to have the Court at that time grant a Motion to Dismiss. I don't believe the Gaeta decision has been reported yet and consequently I am enclosing a copy.

I would also like to point out that in discussions I have had with Mr. Iseman there appears to be no possibility of settling this matter and that consequently this case must be disposed of by motion or by trial.

Finally I wish to assure the Court that my motion to amend the scheduling order was not made to gain more time to make my summary judgement motion. Indeed, drafts of the relevant affidavits and brief were prepared in July prior to the last scheduled date to submit the motion. In retrospect I, of course, should have submitted the papers anyway; however, I strongly suspected that the papers would

have to be altered in the event that there was any further discovery.

In any case, I would very much appreciate your consideration in allowing us to make a summary judgement motion in this case.

Respectfully yours,

DONOHUE, DONOHUE & SABO, P.C.

By:

AOS/pa

Enc.

cc DeGraff, Foy, Conway, Holt-Harris & Mealey, Esqs.

Attention: Robert H. Iseman, Esq.